

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RICK NELSON,

Plaintiff,

vs.

ROBERT WALZER,

Defendant

NO. CV-05-135-AAM

**ORDER GRANTING DEFENDANT'S
MOTION TO SUBSTITUTE PARTY
DEFENDANT**

BEFORE THE COURT is defendant's Motion To Dismiss or, alternatively, to Substitute Party Defendant. (Ct. Rec. 2).

On or about March 25, 2005, plaintiff Rick Nelson filed a civil action against Lieutenant Commander Robert Walzer in the District Court of Spokane County, Washington. A Notice of Small Claim was served on Lieutenant Commander Walzer alleging he was in breach of contract in the amount of \$300.00. At the time of the alleged breach of contract, Lieutenant Commander Walzer was the Commanding Officer of the Naval and Marine Corps Reserve Center in Spokane, Washington, and as such, an employee of the United States. The action was removed from Spokane County District Court to the United States District Court for the Eastern District of Washington on May 3, 2005, pursuant to Title 28 U.S.C. §§ 1441(a), 1442 (a)(1) and 1442a. (Ct. Rec. 1).

Title 28 U.S.C. § 2679 provides that where a federal employee was acting within the scope of his office, not only will the claim be removed from state court to federal court, but the action "shall be deemed to be an action or proceeding brought against the United States . . . and the United

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1 States shall be substituted as the party defendant.” 28 U.S.C. 2679(d)(1)(2). The United States
2 Attorney has certified that Lieutenant Commander Walzer was acting within the scope of his
3 employment at the time of the alleged breach of contract. (Ct. Rec. 3-3). Plaintiff has not
4 responded to the motion as of the date of this order. Defendant’s Motion to Substitute Party
5 Defendant (Ct. Rec. 2) is **GRANTED and the United States is hereby substituted as the**
6 **defendant in this action in place of Lieutenant Commander Walzer. In all further filings, the**
7 **United States shall be listed as the defendant.**

8 The United States shall serve and file an answer or other response to plaintiff’s “complaint”
9 within twenty (20) calendar days. If an answer is filed, this matter will be set for a scheduling
10 conference. If a dispositive motion is filed, the pro se plaintiff will need to respond and for that
11 purpose, he should familiarize himself with the Federal Rules of Civil Procedure (Fed. R. Civ. P. 12
12 and 56 in particular), and this court’s Local Rules, especially LR 7.1 relating to motion practice and
13 LR 56 relating to summary judgment motions (if the United States files a motion for summary
14 judgment).

15 **IT IS SO ORDERED.** The District Executive shall forward a copy of this order to the
16 plaintiff and to counsel for defendants.

17 Dated: June 23rd, 2005

18 s/ Alan A. McDonald
19 ALAN A. McDONALD
20 SENIOR UNITED STATES DISTRICT JUDGE
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